

REMARKS/ARGUMENTS

The following species have been identified:

Formula B.1: subspecies X1-X4, R10 and R11;

Formula C.1: subspecies R16-R21 and n;

Formula D.1: subspecies Z; and

Formula D.2: subspecies R22-R25.

This election is made with traverse.

Applicants thank Examiner Khan for the courtesy of a telephone interview extended to Applicants' representatives. Examiner Khan kindly clarified that a specific fully identified compound for each of the above-noted formulas was required and that an election among the formulas was not required as each is found in claim 1.

Accordingly, Applicants provisionally elect, for examination purposes only, the following sub-species (corresponding to claims 1-13):

Formula B.1:  $X^1$  and  $X^4$  are mercapto,  $X^2$  and  $X^3$  are hydroxy, and  $R^{10}$  is hydrogen;

Formula C.1:  $R^{16}$  and  $R^{20}$  are propyl,  $R^{17}$ - $R^{19}$  and  $R^{21}$  are hydrogen, and  $n=10$ ;

Formula D.1: Z is a non-substituted  $C_3$ -alkylene; and

Formula D.2:  $R^{22}$ - $R^{23}$  and  $R^{25}$  are hydrogen, and  $R^{24}$  is methyl.

Applicants traverse this requirement on the basis that the Office has not considered the guidelines under MPEP §'s 806.04(b) and 806.05(j) in making this requirement.

MPEP § 806.04(b) states:

“Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those in MPEP § 806.05 - § 806.05(j). If restriction is improper under either practice, it should not be required.”

MPEP §806.05(j) states that related product inventions are distinct if:

- “(A) the inventions *as claimed* do not overlap in scope, i.e., are mutually exclusive;
- “(B) the inventions *as claimed* are not obvious variants; and
- “(C) the inventions *as claimed* are either not capable of use together or can have a materially different design, mode of operation, function, or effect.”

Applicants respectfully submit that the Office has not demonstrated any of the indications of distinctness (A), (B) or (C) listed in MPEP §806.05(j).

Furthermore, Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided sufficient indication that the contents of the claims interpreted in light of the description was considered in making the assertion that the species do not relate to a single general inventive concept.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for election of species. Applicants therefore request that the requirement be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

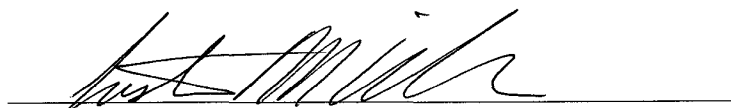
Respectfully Submitted,

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